

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA

CASE No. 19cv00270-GCM

EFREN DELGADO,

Plaintiff,

vs.

THE ALLSTATE CORPORATION, ALLSTATE
INDEMNITY COMPANY, ALLSTATE
INSURANCE COMPANY,

Defendants.

**DEFENDANTS' MOTION TO DISMISS OR, ALTERNATIVELY, TO DISMISS OR
STRIKE CLASS ALLEGATIONS**

Defendants, The Allstate Corporation, Allstate Insurance Company and Allstate Indemnity Company (collectively, the "Defendants"), respectfully move for entry of an order dismissing Plaintiff's Complaint, or, alternatively, dismissing or striking the Complaint's class action allegations. In support, Defendants submit the accompanying Memorandum of Law, which is fully incorporated by reference herein, and further state as follows:

All Plaintiff's claims fail as a matter of law based on his failure to allege sufficient facts demonstrating he is entitled to the Medical Payments benefits he seeks or that he has sustained any injury sufficient to confer standing. Plaintiff's claims are otherwise insufficiently pled and are also subject to dismissal on those grounds. In addition, as Plaintiff's Complaint allegations indicate, only one of the Defendants, Allstate Indemnity Company, actually issued Plaintiff an insurance policy. Courts have held that related insurance entities that did not actually issue the relevant insurance policy -- here, all Defendants except for Allstate Indemnity Company -- are not proper defendants. Accordingly, all Plaintiff's claims against The Allstate Corporation and

Allstate Insurance Company should be dismissed on that ground as well. In addition, Plaintiff fails to allege facts sufficient to establish the requirements for holding a parent company such as The Allstate Corporation, which does not even issue insurance policies, liable.

Alternatively, if any part of this case survives Defendants' Motion to Dismiss on the merits, the class action allegations in the Complaint should be dismissed or stricken because the face of the Complaint shows this case is unsuited for class action treatment as a matter of law. As pled in the Complaint, it is apparent that Plaintiff's claims present far too many predominating individualized issues for this case to proceed on a class action basis. These include highly individualized issues related to the reasonableness and necessity of the medical expenses Plaintiff alleges Defendants underpaid for him and each and every putative class member, and the ability of each putative class member to establish injury and standing. Plaintiff's substantive claims raise even further predominating individualized issues that cannot, as a matter of law, be resolved on a class-wide basis.

WHEREFORE, Defendants respectfully request this Court to enter an order dismissing this action, with prejudice and without leave to amend. Alternatively, Defendants respectfully request the Court to enter an order dismissing or striking the Complaint's class action allegations.

Respectfully submitted,

By: /s/Todd A. Jones
Todd A. Jones
ANDERSON JONES, PLLC
421 N. Blount Street
Raleigh, NC 27601
Tel: 919-277-2541
Fax: 919-277-2544
Tjones@andersonandjones.com

Of counsel:
Steven M. Levy (*pro hac vice*)

Mark L. Hanover (*pro hac vice*)
DENTONS US LLP
233 S Wacker Drive,
Suite 5900
Chicago, IL 60606
Tel: 312-876-8000
Fax: 312-876-7934
steven.levy@dentons.com
mark.hanover@dentons.com

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Defendants' Motion to Dismiss was filed on August 16, 2019 using the Court's CM/ECF which will send notification to the parties below:

SCHWABA LAW FIRM, PLLC

Andrew J. Schwaba
NC Bar No.: 36455
212 South Tryon Street
Suite 1725
Charlotte, NC 28281
(704) 370-0220
(704) 370-0210 (fax)
aschwaba@schwabalaw.com

NICHOLSON LAW FIRM, P.A.

Edward H. Nicholson, Jr.
NC Bar No. 36123
212 South Tryon Street
Suite 1725
Charlotte, NC 28281
(704) 223-2406 (telephone)
nicholsonshumaker@att.net

Attorneys for Plaintiff

Dated: August 16, 2019

By: /s/ Todd A. Jones
Todd A. Jones, NCSB #25593
Attorney for Defendants
Anderson Jones, PLLC
P.O. Box 20248
Raleigh, NC 27619
Phone: (919) 277-2541
Fax: (919) 277-2544